



FACT SHEET

**WHAT POTENTIAL
SMALL ENTITY
REPRESENTATIVES SHOULD
KNOW ABOUT
THE SMALL BUSINESS
ADVOCACY REVIEW PANEL
PROCESS**

What is an EPA Small Entity Representative?

The Small Business Advocacy Review (SBAR) Panel will ask a selected group of Small Entity Representatives (SERs) to provide comments on behalf of their company, community, or organization to advise the Panel regarding a particular proposed rule. SERs' participation in the rulemaking process will ensure that EPA hears small entity concerns.

A SER is a person appointed by the Small Business Advocacy Chair (SBAC) as a participating representative of small entities likely to be subject to the requirements of a specific proposed rule under development. The Regulatory Flexibility Act (RFA) defines small entities as small businesses, small governments, and small non-profit organizations.

Why does EPA need Small Entity Representatives?

EPA has an ongoing commitment to minimize the burden of its regulations on small entities to the extent feasible, while still meeting its statutory requirements. The Small Business Regulatory Enforcement Fairness Act (SBREFA), enacted in March 1996, amended the RFA to provide small entities with an expanded opportunity to participate in the development of certain regulations.

In particular, EPA must convene a SBAR Panel for certain proposed rules under development, unless the Agency determines the rule will not impose a significant economic impact on a substantial number of small entities. Each Panel is led by the SBAC and includes federal representatives from the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA. The Panel meets with SERs likely to be subject to the rule to hear their views on the potential impacts of the rule and on ways to reduce them.

Who is eligible to be a Small Entity Representative?

A small entity stakeholder is eligible to be a SER if he or she is directly subject to the particular proposed regulation that is under development and meets one of the following definitions of small entity listed below. Please note, however, EPA has the authority to use an alternative definition after notice and comment, and for small businesses, consulting with SBA.

- **Small Business:** Defined under Section 3 of the Small Business Act. SBA defines "small business" variably, based on each firm's category in the North American Industry Classification System.
- **Small Organization:** Any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.
- **Small Governmental Jurisdiction:** Governments of cities, counties, towns, townships, villages, school districts, or special districts, with population of less than 50,000.

Typically, EPA prefers the actual owners or operators of small businesses, community officials, and non-profit organizations for this purpose. However, a person from a trade association that exclusively or primarily represents potentially regulated small entities, may also serve as a SER.

Who chooses Small Entity Representatives?

For each rule that may have a significant economic impact on a substantial number of small entities, EPA identifies what types of small entities are likely to be subject to the rule and works in partnership with other Agency offices in developing a list of potential SERs. EPA also consults with the SBA Chief Counsel for Advocacy to identify individuals to serve as SERs. The SBAC considers these recommendations and appoints a group of official SERs.

At what stage in the rulemaking does the Panel process occur?

Prior to proposing a rule, EPA engages its small entity stakeholders in a dialog to learn more about their concerns and ideas regarding the rule under development. If the Agency believes that the rule may have a significant economic impact on a substantial number of small entities, EPA will begin the SBAR Panel process. This process is intended to provide a special opportunity for small entities to participate in the rulemaking.

What will being a Small Entity Representative entail?

Generally, SERs will be asked to review background information, listen to informational briefings and provide oral and written comments to the Agency and later to the Panel.

Typically, prior to convening a Panel, EPA will provide the SERs with some background information on the rule and ask for their initial feedback. The Agency may also arrange a meeting with small entities potentially subject to a particular rule to hear their initial concerns and suggestions. Representatives of OMB and SBA are also invited to this meeting.

After the SBAR Panel is convened, the Panel will provide the SERs with some additional information, followed by a teleconference or a face-to-face meeting to give them the opportunity to communicate directly with the Panel members. The Panel also generally requests SERs' comments in writing. The goal of this consultation is to provide a forum for the SERs to raise issues of concern and to provide the Panel with insight into technical issues and potential ways of approaching them.

What will be done with my small entity input?

Each SBAR Panel has 60 days to consider SER comments in addition to other rule-related materials prepared by EPA and prepare a report to the Administrator of EPA on the potential small entity impacts of the rule and on possible ways to reduce those impacts. The Panel report is considered by the Agency as it makes decisions on the proposed rule and is made part of the official rulemaking record with all written small entity comments appended. SERs may also submit comments during the standard public comment period after the publication of the proposed rule in the Federal Register.

Where can I get more information?

Several EPA documents are available that can provide more information on the RFA/SBREFA, the Agency's small entity compliance assistance efforts and the elements of a regulatory flexibility analysis. These documents and further assistance with any RFA/SBREFA questions are available from the SBAC, SBAC staff, or from the RFA/SBREFA website, listed below.

Small Business Advocacy Chair

Tom Kelly
(202) 564-4000

Small Business Advocacy Chair Staff

Stuart Miles-McLean (Team Leader)
(202) 564-6581, miles-mclean.stuart@epa.gov
Jennifer Vernon
(202) 564-6573, vernon.jennifer@epa.gov
Patrick Easter
(202) 564-6566, easter.patrick@epa.gov
Patricia Grim
(202) 564-6583, grim.patricia@epa.gov

RFA/SBREFA Website

www.epa.gov/sbrefa